IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 486 OF 2006
IN
NOTICE OF MOTION NO. 176 OF 2005
IN
INSOLVENCY NOTICE NO. N/201 OF 2005.

Mr. Wilbur Robert Gomes] .. Appellant (Ori.Judg.Debtr)

Versus

Citizen Cooperative Bank Limited.] .. Respondents (Ori.Judg.Credtr)

Mr. S.R. Mishra for the appellant.

Mr. R.N. Singh for the respondent.

CORAM: R.M. LODHA &
S.A. BOBDE, JJ.

DATED: 29TH AUGUST, 2006

P.C. :

. We heard Mr. S.R. Mishra, the counsel for the appellant and perused the impugned order. Section 9(i) of the Presidency Towns Insolvency Act reads thus:

> "9. A debtor commits an act of insolvency in each of the following cases, namely:-
>
> (a) .....
> (b) .....
> (c) .....
> (d) .....
> (e) .....
> (f) .....
> (g) .....
> (h) .....

> (i) [*In Bombay* : if after a creditor has served an insolvency notice on him in respect of a decree or an order for the payment of any amount due to such creditor, the execution of which is not stayed, he does not within the period specified in the notice which shall not be less than one month comply with the requirements of the notice;
>
> Provided that the debtor shall not be deemed to have committed an act of insolvency for not complying with the requirements of the notice, if he has a counter claim or set off which equals or exceeds the decretal amount or the amount ordered to be paid by him and which he could not lawfully set up in the suit or proceeding in which the decree or order was made against him."

2. It is thus provided in the aforesaid provision that a debtor commits an act of insolvency if the debtor does not make payment due to such creditor after insolvency notice is served by the creditor upon the debtor in respect of the decree or an order for payment, the execution of which is not stayed and if the period specified in the notice is not less than one month.

3. Admittedly, in the present case the appellant has suffered the Award dated 9th December, 2003 in the principal sum of Rs.5,06,109/- with an interest at the rate of 9% p.a. The appellant challenged the aid Award by filing Writ Petition before this Court being Writ Petition No.2820 of 2004. On the prayer for interim relief, the learned single Judge of this Court passed a

conditional order of stay inasmuch as if the appellant deposited 50% of the Award amount, the execution of the Award was stayed. Admittedly, the appellant did not deposit 50% of the Award amount within the time granted by the learned single Judge. Consequently, the creditor served insolvency notice upon the appellant (debtor) dated 25th November, 2005 calling upon the debtor to make payment within 35 days from the date of receipt of the notice. It is not in dispute that the appellant did not make the payment as required in insolvency notice. Apparently, therefore, in the light of Section 9(i), the appellant has committed an act of insolvency. However, the counsel for the appellant urged that Section 9(i) only applies in respect of a decree or an order for payment of any amount due to such creditor and that does not include the Award. The argument is wholly misconceived and fallacious. The expression, "An order for payment of any amount due to such creditor" covers the Award passed by the Cooperative Appellate Court.

4. The counsel for the appellant then submitted that since the Writ Petition has been filed by the appellant against the Award, it cannot be said that clean debt is outstanding against the appellant. We have already referred to Section 9(i). The fact that the appellant has suffered Award and thereby there is an

order for payment in the sum of Rs.5,06,109/- with interest thereon due to respondent-creditor is apparent. Though the said Award is under challenge in the Writ Petition filed by the appellant, but insofar as the operation of the said Award is concerned, it does not remain stayed as the appellant failed to comply with the condition by not depositing 50% of the amount as directed. It is not in dispute that the creditor has served an insolvency notice on the appellant (debtor) in respect of the said Award by giving him notice of not less than one month. The appellant failed to comply with the said notice. Thus the appellant has committed an act of insolvency and it is illogical to say that no clean debt is outstanding against the appellant.

5. The counsel for the appellant then submitted that the claim made by the creditor was for enforcement of the security (mortgage) and, therefore, the impugned Award cannot be said to have crystallized the debt. The contention is wholly misconceived. The Award passed by the Cooperative Appellate Court reads thus:

> "Respondents No.1 and 2 are ordered to pay amount of Rs.5,06,109/- with 9% interest from 1/4/1994 to the appellant-Bank."

6. That the present appellant is one of the

judgment debtors in the said Award is not in dispute. It does not make any difference in law whether the claim made by the creditor was for enforcement of security or otherwise. The fact of the matter is that the appellant has suffered an Award in specific sum (in other words, money decree) and is indebted to the respondent.

7. The Appeal has no force and is dismissed in limine.

Sd/-
[R.M. LODHA, J.]

Sd/-
[S.A. BOBDE, J.]